IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

NOTICE OF MOTION NO.4 OF 2007

IN

SUIT NO.3 OF 2006

IN

PETITION NO.779 OF 2005

Shri.Dilipbhai Pranlal Shah. ..Petitioner/Plaintiff

vs.

Mrs.Bharti M. Mehta ...Caveatrix/Defendant.

Ms.J.M.Sidhwa i/b. M/s.K.V.Chheda & Co., for Petitioner.

Mr.G.C.Mohanty i/b. D.R.Mishra, for Caveatrix.

CORAM: D.K.DESHMUKH,J.

DATED: 1st March, 2007.

P.C.:-

1. This is a notice of motion taken out by the petitioner in the probate petition for removal of the caveat filed by the caveatrix Bharti M. Mehta. The admitted position is that the probate petition no.779 of

2005 has been filed by one Dilipbhai Pranlal Shah who claims to be the executor named in the Will executed by Jagubhai Vadilal Shah who died on 26th September,2003. Admittedly, the caveatrix is not related to him, she is not a widow. The only ground, according to the affidavit filed in support of the caveat even for her entitlement to file caveat, is that in the Will which was executed by the deceased she has included in one property of the wife of the deceased and the deceased had entered into a memorandum of understanding with the caveatrix. Only because the deceased has included some property in his Will as his property, a person who may be interested in that property will not get right to file caveat because even if the Court grants probate of the Will that probate by itself will not make the deceased owner of the property which is specified in the Will. Obviously, therefore, the caveatrix does not have any caveatable interest and therefore, she is not entitled to maintain the caveat. The notice of motion is therefore, granted in terms of prayer clause (a).

2. The learned Counsel appearing for petitioner states that the caveat filed by Mrs.Bharti M. Mehta was the only caveat and as that caveat has been removed, Office may proceed with the petition in accordance with law.